

The Retailers' Occupation Tax Act imposes a tax at the rate of 6.25% upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 and 2-10 (1998 State Bar Edition). (This is a GIL).

July 20, 2000

Dear Xxxxx:

This letter is in response to your letter received June 26, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

Enclosed please find a copy of a notice concerning the taxes and/or reporting requirements in your State which we provide to our corporate clients as a courtesy. Please note that this notice is prepared to cover only general business corporation requirements unless otherwise specified. The notice is also meant to be an alerting tool with general information regarding these requirements and is not meant to be a calculating tool. Please let me know whether the information in the notice is correct.

It is important for us to know if these taxes and/or reporting requirements are applicable to limited liability companies, limited partnerships or registered limited liability partnerships. Please provide some indication concerning the treatment of these entities, if possible.

It is also important for us to know who receives the forms which you send in connection with the taxes and/ or report. Do you send the forms to the corporation's registered agent at the address of the registered office or to the corporation at its principal address or mailing address listed on the last return filed on the records of the department?

In addition, we would like to know whether or not we may include your telephone number as part of the address. If so, please indicate the correct phone number to be used.

We would be pleased to incorporate any suggestions, comments, or corrections into the notice to improve its quality.

July 20, 2000

Would you kindly indicate your comments on the copy of the notice and return it to our STATE office in the self-addressed stamped envelope provided? If you wish, please do not hesitate to telephone me at our toll-free number-####.

Thank you for your cooperation in this matter.

The Retailers' Occupation Tax Act imposes a tax at the rate of 6.25% upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 and 2-10 (1998 State Bar Edition). "Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, limited liability company, or a receiver, executor, trustee, guardian or other representative appointed by order of any court. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax at the rate of 6.25% upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 and 3-10 (1998 State Bar Edition).

Please find enclosed a copy of 86 Ill. Adm. Code 130.310 regarding the appropriate tax rates for food, drugs, medicines and medical appliances. As you can see from the regulation, food that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) is taxed at the rate of 1% plus applicable local taxes. Food is defined as any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including foods such as condiments, spices, seasonings, vitamins, bottled water and ice. Products that do not meet the appropriate definitions of food, drugs, medicines and medical appliances, or are food prepared by the vendor for immediate consumption, are taxable at the higher State sales tax rate of 6.25% plus applicable local taxes. Soft drinks are always taxed at the high rate. "Soft drinks" does not include coffee, tea, non-carbonated water, infant formula, milk or milk products, or drinks containing 50% or more natural fruit or vegetable juice.

A medicine or drug is defined as any pill, powder, potion, salve, or other preparation intended by the manufacturer for human use and that purports on the label to have medicinal qualities. See Section 130.310(c)(1). A medical appliance is an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See Section 130.310(c)(2). Included as medical appliances are such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines (including the dialyzer). Corrective medical appliances such as hearing aids, eyeglasses and contact lenses also qualify for the low rate of tax.

In addition to the State Retailers' Occupation Tax, various local taxes may apply to a transaction. The enclosed copy of 86 Ill. Adm. Code 270.115 explains the manner in which one determines if a local tax, and which local tax, is applicable to a transaction.

As the regulation explains, local taxes are incurred when sales occur within a jurisdiction imposing a local tax. The Department has determined that the most important element of selling occurs when a seller accepts the purchaser's offer to buy. Consequently, selling is deemed to occur where the purchase order is accepted by the seller. It is the rate imposed by a jurisdiction at that location that will determine the correct amount of local taxes. The location of the purchaser, or the point at which title passes to the buyer, is immaterial.

If a purchase order is accepted outside this State but the tangible personal property which is sold is in an inventory of the retailer located within a home rule municipality at the time of sale (or is subsequently produced in the home rule municipality), then delivered in Illinois to the purchaser, the place where the property is located at the time of sale (or is subsequently produced in Illinois) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale. See Section 270.115(b)(3).

Please see the enclosed Taxpayer Services and General Information Guide for Illinois Taxpayers. This guide provides information and rates on State and local taxes administered by the Department.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred as an incident to sales of service. See the enclosed copy of 86 Ill. Adm. Code 140.101. The purchase of tangible personal property that is transferred to the service customer may result in either Service Occupation Tax liability or Use Tax liability for the servicemen depending upon which tax base the servicemen choose to calculate their tax liability. The servicemen may calculate their tax base in one of four ways: (1) separately stated selling price of tangible personal property transferred incident to service; (2) 50% of the servicemen's entire bill; (3) Service Occupation Tax on the servicemen's cost price if the servicemen are registered de minimis servicemen; or (4) Use Tax on the servicemen's cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If the servicemen do not wish to separately state the selling price of the tangible personal property transferred, the servicemen must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the servicemen's cost price of the tangible personal property transferred.

The third way servicemen may account for tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Serviceman may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal

July 20, 2000

property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to the sale of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if the servicemen determine that the annual aggregate cost price of tangible personal property transferred as an incident of the sale of service is less than 35% of the servicemen's annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. The servicemen are not authorized to collect "tax" from their service customer nor are the servicemen liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

Beginning October 1, 2000, a taxpayer who has an annual tax liability of \$200,000 or more shall make all payments required by rules of the Department by electronic funds transfer. The term "annual tax liability" shall be the sum of the taxpayer's liabilities under the Retailers' Occupation Tax, and under all other State and local occupation and use tax laws administered by the Department, for the immediately preceding calendar year. 35 ILCS 120/3.

On and after October 1, 2000, if the taxpayer's average monthly tax liability to the Department under the Retailers' Occupation Tax Act, the Use Tax Act, the Service Occupation Tax Act, and the Service Use Tax Act, excluding any liability for prepaid sales tax to be remitted in accordance with Section 2d of the Retailers' Occupation Tax Act, was \$20,000 or more during the preceding 4 complete calendar quarters, he shall file a return with the Department each month by the 20th day of the month next following the month during which such tax liability is incurred and shall make payment to the Department on or before the 7th, 15th, 22nd and last day of the month during which such liability is incurred. 35 ILCS 120/3.

Tax forms are mailed to the principal business address listed on Form NUC-1, Illinois Business Registration, unless otherwise specified by the applicant.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

ST 00-0150-GIL

Page 5

July 20, 2000

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk

Enc.